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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,354	03/12/2004	Maurice Clarence Kemp	108347.00074 (MORN-0015)	6352
25555	7590	05/15/2007	EXAMINER	
JACKSON WALKER LLP			PRATT, HELEN F	
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DALLAS, TX 75202-3797				
			ART UNIT	PAPER NUMBER
			1761	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/799,354

Applicant(s)

KEMP ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-124 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-124 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter et al. (5,419,908).

Richter et al. disclose a process of making a food additive microbial composition by contacting the food with acids such as benzoic (claims 1, 2) and inorganic acids such as phosphoric and sulfuric as in claims 1-7 (col. 1, lines 10-20, col. 9, lines 30-45). The pH is from 2.5 to 5.5 (col. 20, lines 1-35). Claims 1, 3, 4, 7 differ from the reference in the particular amounts of inorganic and organic acid. However, it is seen that it would have been within the skill of the ordinary worker to use particular amounts of known acids for their known function. The discovery of an optimum value of a result effective variable is ordinarily within the skill of the art. In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). In developing an acid containing bactericide, properties such as amounts of acids are important. It appears that the precise ingredients as well as their proportions affect the preservation and shelf life of the product, and thus are result effective variables, which one of ordinary skill in the art would routinely optimize. Claim 1 further differs in the use of an acidic composition,

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which has a pH of from 1.0 to 1.5 which is in contact with the food until it is ready for consumption. However, Richter et al. disclose a pH of 2. No patentable distinction is seen at this time in a pH of 2 and in a pH of about 1.5 as claimed. Nothing is seen that the composition of Richter et al. is removed from the food product. Therefore, it would have been obvious to use enough acid to treat the product to reduce microorganisms and to use a low pH as disclosed by Richter et al. and to leave the acid in contact with the food product until it is ready for consumption.

Claim 2 requires particular organic acid not disclosed by the reference. However, the reference does use organic acids. No particular food is disclosed which would have made critical the use of a particular acid. Therefore, it would have been obvious to use other organic acids as shown by the reference in the claimed process.

Claims 9-39, 51-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter et al as applied to claims 1-7 above, and further in view of Kemp (6,436,891).

Claim 9 further requires the use of a monobasic salt of phosphoric acid. However, Kemp discloses adding sulfuric acid to calcium hydroxide and an additive, which can be used in a food production as in claim 9-13, 20 (abstract). The particular amounts as in claims 14-19 are seen as being within the skill of the ordinary worker as it is well known that acidic conditions reduce microbes and bacteria. Therefore, it would have been obvious to use the metal salts of Kemp in the composition of Richter et al for the function of reducing the level of bacterial contamination.

Claims 21-27 further require that the metal salt is one of an organic acid and claim 22 is made by adding a base material to the acid. Kemp et al. disclose that it is known to combine an inorganic acid with a base (abstract). However, nothing new is seen in using an inorganic acid instead of an organic acid as they both combine with a base. The particular amounts are seen as being within the skill of the ordinary work. See *In re Boesch* above. Therefore, it would have been obvious to make a product using an inorganic acid instead of an organic acid for their known functions.

Claim 28 further requires the use of an alcohol and claim 29 that it is ethanol. Kemp discloses that 0.5% ethanol and lactic acid can reduce microbes as in claims 28-32. Therefore, it would have been obvious to use alcohol with acids in the combination of the combined references (col. 18, lines 56-60).

Claim 33 further requires the use of a surfactant and 34 that it is anionic and claim 35 the use of polysorbate. Kemp discloses the use of an anionic surfactant and polysorbates. The limitations as to the above are disclosed in col. 10, lines 23-48 to achieve a pH of 1.8. The particular amounts as in claims 36-38 are seen as being within the skill of the ordinary worker. Therefore, it would have been obvious to use surfactant in particular amounts in the composition of the combined references.

Claim 39 further requires the use of oleic acid. However, various acids have been disclosed by the combination of references. Nothing new is seen in the use of oleic acid absent a showing to the contrary. Therefore, it would have been obvious to use various acids in the composition of the combined references.

Claims 45-49 are to in ready- to- eat food products and claim 50, a dough. As the above combination of references is food products nothing is seen that the claimed combinations of ingredients as shown above could not be used for the instant claimed products.

The limitations of claims 51-55 have been disclosed above and are obvious for those reasons.

Claims 40-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to the above claims above, and further in view of Hei et al (6,627,593).

Claims 40-44 further require particular amounts of peroxides. Hei et al disclose the use of hydrogen peroxide, acids and surfactant in an antimicrobial solution for food products (col. 3, lines 6-20). The particular amounts of amounts are seen as being within the skill of the ordinary worker. Therefore, it would have been obvious to use known antimicrobial solutions containing peroxides in the composition of the combined references.

Claims 55-124 are rejected under 35 U.S.C. 103(e) as being unpatentable over Kemp et al. US 2002/0197365.

Claims 55-124 rejected under 35 U.S.C. 102(e) as being anticipated or in the alternative obvious over Kemp et al. US 2002/0197365 A1.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome

either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Kemp discloses a process for making HAMMIA and AGIIS (abstract). The compositions are the same as disclosed in para on page 2 (0018, 0019, 0019) as in claims 56 and 57, various mixtures can be made as in claim 58 (0019).

The reference discloses that the process is to reduce biological contaminants in a nutriment materials which is seen to include ready to eat foods as the reference discloses beverages, seasonings, food dressing, stuffings, hotdogs, steaks and defines nutriments as something that nourishes (0011, 0012, 0180)).

The particular amounts as in claim 59 are seen to have been shown as the reference discloses inoculating and dipping the meat in the Hammia solution (0180-0184). Therefore, it would have been obvious to use amounts within the claimed range.

The further limitations of the claims are shown in the reference which applicants know well since they are listed as inventors. The particular amounts are seen as being within the skill of the ordinary worker. Therefore, it would have been obvious to make the composition as disclosed by the reference to Kemp '7365.

#### ARGUMENTS

Applicant's arguments filed 2-23-07 have been fully considered but they are not persuasive. Applicants argue that neither Alderton nor Richter suggest using an acidic composition with the claimed pH to be left in contact with the food until consumption. However, the reference to Alderton has been dropped. As above, no patentable

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distinction is seen between a pH of 1.5 and the pH of 2 as shown by Richter et al. at this time. In addition, it is well known that various acids have low pH's and it would have been obvious to vary the amounts and pH's in order to preserve a food product. Applicants argue that as to claims 9-20, that Kemp does not teach adding metal salts to an acidic composition with the claimed pH. However, Kemp adds a salt which is within the claimed Group I or II. Nothing has been shown that neutralization would occur. Applicants have not excluded any of the inorganic acids of Kemp, and in fact as in claim 12 use an inorganic acid.

Applicants' further arguments are to the fact that the limitations of claim 1 have not been shown, therefore, the other rejections fail. As above, this is not seen.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.




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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 5-10-07

  
HELEN PRATT  
PRIMARY EXAMINER